

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HEALTH REPUBLIC INSURANCE
COMPANY,

Plaintiff,
on behalf of itself and all others
similarly situated,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

No. 1:16-cv-00259-MMS
(Judge Sweeney)

**UNOPPOSED MOTION FOR ENTRY OF PROPOSED ORDER
GRANTING PLAINTIFF HEALTH REPUBLIC INSURANCE COMPANY'S
UNOPPOSED MOTION FOR CLASS CERTIFICATION**

On October 5, 2016, Plaintiff Health Republic Insurance Company (“HRIC”) filed a Motion for Class Certification pursuant to Rule 23 of the United States Court of Federal Claims (the “Motion”) [Dkt. 16]. On December 23, 2016, the United States filed a response [Dkt. 28] stating that it does not oppose the Motion. HRIC has shared the Proposed Order attached as Exhibit 1 with the United States. The United States has reviewed the attached Proposed Order and stated it does not oppose entry of this Order granting Plaintiff’s Motion for Class Certification and establishing a notice schedule and deadlines for potential class member disclosures. Therefore, HRIC respectfully requests that the Court enter the Proposed Order attached as Exhibit 1.

DATED: December 23, 2016

Respectfully submitted,

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/s/ Stephen Swedlow

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*Attorneys for Plaintiff Health Republic
Insurance Company and the Class*

CERTIFICATE OF SERVICE

I certify that on December 23, 2016, a copy of the attached Unopposed Motion For Entry of Proposed Order Granting Plaintiff Health Republic Insurance Company's Unopposed Motion for Class Certification was served via the Court's CM/ECF system on Defendant's counsel Charles Edward Canter.

/s/ Stephen Swedlow
Stephen Swedlow

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**[PROPOSED] ORDER GRANTING PLAINTIFF HEALTH REPUBLIC INSURANCE
COMPANY'S UNOPPOSED MOTION FOR CLASS CERTIFICATION**

THIS CAUSE came before the Court on Plaintiff Health Republic Insurance Company's ("HRIC") October 5, 2016 Motion for Class Certification pursuant to Rule 23 of the United States Court of Federal Claims (the "Motion") [Dkt. 16]. On December 23, 2016, the United States filed a response [Dkt. 28] stating that it does not oppose the Motion. The Court, having reviewed the Motion and response, as well as any accompanying memoranda and exhibits thereto, hereby:

ORDERS AND ADJUDGES:

1. The Motion is GRANTED;
2. This case is certified as a class action under RCFC 23(b)(2) and 23(b)(3) for purposes of litigation and trial.

Certification of the Class

3. Based on the findings articulated below and pursuant to RCFC 23(c)(1)(B), the Court hereby certifies the following litigation class (the "QHP Issuer Class"):

All persons or entities offering Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable costs in

either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Excluded from the Class are the Defendant and its members, agencies, divisions, departments, and employees.

4. The United States, in agreeing to certification of the class as defined above, has not waived the right to move for decertification or to move for the class to be divided into additional subclasses if, as this case develops, the circumstances warrant such a motion. *See* RCFC 23(c)(1)(C), 23(c)(5), 23(d). Further, the United States, in agreeing to certification of the class as defined above, has not waived (1) any arguments that it raised in its pending Motion to Dismiss filed on June 24, 2016; (2) the right to dispute any material fact or to contest any theory of liability under section 1342 of the Patient Protection and Affordable Care Act (“section 1342”) and 45 C.F.R. § 153.510; or (3) the right to contest whether any particular person or entity falls within the class or is otherwise entitled to relief.

5. The class claim is for amounts allegedly owed to the QHP Issuer Class by the United States pursuant to (a) section 1342, and (b) 45 CFR § 153.510(b). The plaintiff brings this claim pursuant to the Tucker Act, 28 U.S.C. § 1491. This claim is certified for class treatment.

6. Pursuant to RCFC 23(a) and 23(b), the Court hereby finds that the prerequisites for a class action have been met. Specifically, certification of the QHP Issuer Class is warranted because:

- a. the QHP Issuer Class, which is made up of several hundred QHP issuers spread throughout the country, is so numerous that joinder is impracticable;
- b. HRIC’s claims present common issues and are typical of the QHP Issuer Class, and they stem from acts of the United States that generally apply to the class;

- c. HRIC and Lead Counsel (defined below) will fairly and adequately represent the QHP Issuer Class; and
- d. common issues predominate over any individual issues affecting the members of the QHP Issuer Class.

7. The Court further finds that HRIC's interests are aligned with the interests of all other members of the QHP Issuer Class, and that proceeding with this action on a class basis is superior to other means of resolving the matter.

Appointment of Lead Counsel and Class Representatives

8. Pursuant to RCFC 23(c)(1)(B), the Court hereby appoints Quinn Emanuel Urquhart & Sullivan, LLP as Lead Counsel for the QHP Issuer Class, having previously determined in the Court's October 25, 2016 Order [Dkt. 20] that the requirements of RCFC 23(g) are fully satisfied by this appointment. The Court finds that the designation of Quinn Emanuel is in the best interests of the class because the firm (a) has zealously represented the interests of the class in litigating this case before and while serving as interim class counsel; (b) has extensive relevant experience in complex commercial litigation and knowledge of the law applicable to this case; and (c) is willing to commit (and has committed) the resources necessary to represent the class. The duties of Lead Counsel shall be the same as the duties designated to Quinn Emanuel while serving as interim class counsel, as set forth in the Court's Order of October 25, 2016 [Dkt. 20].

9. Plaintiff HRIC is designated as the QHP Issuer Class representative.

Notice Schedule and Deadlines for Potential Class Member Disclosures

10. Pursuant to the RCFC 23(c)(2), Lead Counsel shall submit to the Court a proposed notice plan and opt-in schedule that complies with the requirements of RCFC

23(c)(2)(B) by no later than **January 20, 2017**;

11. The United States shall provide to Plaintiff a list of potential class members (the “List”), which shall include all entities that offered Qualified Health Plans under the Patient Protection and Affordable Care Act in the 2014 and 2015 benefit years, and whose allowable costs in either the 2014 or 2015 benefit years, as calculated by the Centers for Medicare & Medicaid Services, were more than 103 percent of their target amounts (as those terms are defined in the Patient Protection and Affordable Care Act). Defendant agrees to forward the List to Plaintiff no later than **January 13, 2017**. The List shall include the name of the individual or entity that is a potential class member; the current or last known email address of the individual or entity (providing name and email of person responsible for risk corridors receivables, if known); and the current or last known mailing address of the individual or entity.

12. If after January 13, 2017, Plaintiff discovers the identity of additional potential class members to whom Plaintiff believes notice should be provided, Plaintiff shall promptly inform the United States. The United States shall have an opportunity to object to any additional potential class members within seven calendar days from the date that Plaintiff identifies the newly discovered potential class members, by forwarding its objections to Plaintiff by electronic mail. If the parties are unable to resolve any of The United States’ objections to the newly discovered potential class members, they shall file a joint motion setting out in separate sections their respective positions for resolution by the Court.

DATED: _____

HON. MARGARET M. SWEENEY